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Supreme Court of the United States

October Term, 1962

No. 75

MADELINE C. SCHROEDER,
Appellant,

against

THE CITY OF NEW YORK,
Appellee.

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF.

GOLDSTEIN & GOLDSTEIN,
Attorneys for Applicants,
274 Broadway,
Monticello, N. Y.

BENJAMIN M. GOLDSTEIN,
Of Counsel.

THE REPORTER COMPANY, INC., Walton, N. Y.—UN 5-4131—1962

Supreme Court of the United States

October Term, 1961.

No. 763.

MADELINE C. SCHROEDER,

Appellant,

against

THE CITY OF NEW YORK,

Appellee.

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF.

The following law firms and attorneys hereby apply to this Court for permission to file a brief as *amicus curiae* on the question of the jurisdictional statement herein.

The Corporation Counsel of the City of New York has refused to give his consent thereto.

The names and addresses of the applicants are as follows:

Goldstein & Goldstein	274 Broadway, Monticello, New York
Cooke & Willis	236 Broadway, Monticello, New York
Newberg & Sakofsky	South Fallsburgh, New York
Harry C. Resnick	South Fallsburgh, New York
William F. Norton, Jr.	26 Broadway, New York 4, New York

The interests of the applicants herein are as follows:

Each of the above-named applicants represent clients who are owners of riparian properties along the Neversink River downstream from the Neversink Dam, several

of whom are upland owners having rights of way in their deeds across riparian properties and to the use of the Neversink River for various purposes including mainly fishing, bathing and boating. These properties include homes, acreage, hotels, summer motels, summer bungalow colonies and businesses. These property owners above referred to, did not file their respective claims for compensation within the three year period fixed by the Water Supply Act for the reason that these owners did not know of the diversion of the said river by the City until after the City has claimed that the statute of limitations for the filing of claims had expired.

The applicants herein have been following this case through the New York Courts as the interests of their respective clients are vitally affected by its outcome.

The applicants alone represent approximately seventy (70) claims which the City claims to have been filed too late although there are a great number of other claims represented by other counsel who are not applicants here and who are likewise vitally interested in the results.

The undersigned have read the appellee's motion to dismiss and have discussed with Mr. Louis B. Scheinman, attorney for appellant, appellant's intended brief in opposition to said motion to dismiss.

Mr. Scheinman has indicated to us that he intends to argue in his brief that the statute in question is constitutionally defective in that it fails to require notice reasonably calculated to attract the attention of interested parties, and particularly that the statute is inherently defective in failing to provide for the simple expedient of mailing. He does not stress therein, and deems it unimportant to stress, the actual and deliberate manner in which the constructive service was made so as to attract

the attention of as few interested parties as possible. In short, his argument is that he is entitled to a reversal of the judgment below because of the defective statute, and that the manner of publication merely serves to illustrate the statutory defects.

Applicants feel that such an argument is not complete and wish to argue in their proposed brief that the actual manner in which the service here has been made has caused a deprivation of property without due process of law in contravention to the 14th Amendment of the United States Constitution.

Applicants also wish to argue the failure of the statute to provide for the indexing in the County Clerk's office against the names of the record owners of the taking and the nature and extent thereof so that a title search would reveal such taking to a subsequent purchaser for value and without notice.

Applicants also wish to point out and argue the effect of this statute upon the interests of mortgagees, infants, incompetents, and absentee owners.

Applicants also wish to argue that the said statute had failed to provide for the payment of even a nominal sum of money for the deprivation of these known owners of their rights to the uninterrupted flow and use of the waters of the Neversink River in its natural state and stage.

We believe that these matters will not be covered in the briefs on this motion.

Permission to file an *amicus curiae* brief is therefore most respectfully requested.

Dated: March 29, 1962.

Respectfully submitted,

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274 Broadway,
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Monticello 1950.

BENJAMIN M. GOLDSTEIN,
Of Counsel.